

E. NEW BUSINESS

- 2. Resolution 2024-XX: Authorizing the acquisition of real property located in Kachemak Selo, Alaska for school purposes.**

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Brent Johnson, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Peter A. Micciche, Mayor
Brandi Harbaugh, Finance Director
Elizabeth Hardie, Grant Administrator
John Hedges, Purchasing and Contracting Director
Robert Ruffner, Planning Director

FROM: Aaron Hughes, Land Management Officer

DATE: May ____, 2024

RE: Resolution 2024-XX Authorizing the Acquisition of Real Property Located in Kachemak Selo, Alaska for Future School Purposes (Mayor)

The Kenai Peninsula Borough School District ("KPBSD") provides educational instruction to students within the Kachemak Selo attendance area. The existing school facilities in Kachemak Selo consist of residential structures currently under lease by KPBSD. These leased structures are deficient for school purposes, with one existing facility having been decommissioned due to safety concerns.

The Kenai Peninsula Borough ("KPB") has been awarded \$10,867,503 in Department of Education and Early Development ("DEED") funding for the Kachemak Selo School Project.

In 2014, a school site selection committee recommended an alternate school site that was later deemed not viable due to geotechnical findings. The parcel proposed for acquisition currently houses the existing decommissioned leased facility.

KPB has no conveyed or selected lands within the Kachemak Selo community that would satisfy the needs of the project. Acquisition of the proposed parcel will provide KPB a land holding within the community of Kachemak Selo for siting of a future school, providing a location necessary to develop options suitable to address current and future needs.

The acquisition of a proposed parcel is an important step towards satisfying the educational needs of the community. The Resolution authorizes the acquisition at a total price of \$160,000.00 to include title / closing costs, and due diligence fees.

Your consideration of the Resolution is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED
Acct. No. _____
Amount: _____
By: _____ Date: _____

Introduced by:
Hearing:
Action:
Vote:

Mayor
2024

**KENAI PENINSULA BOROUGH
RESOLUTION 2024-**

**A RESOLUTION AUTHORIZING THE ACQUISITION OF REAL PROPERTY
LOCATED IN KACHEMAK SELO, ALASKA FOR SCHOOL PURPOSES**

- WHEREAS,** the Kenai Peninsula Borough School District (“KPBSD”) currently delivers education instruction in the community of Kachemak Selo in private residential structures leased by KPBSD; and
- WHEREAS,** the leased structures are deficient for school purposes; and
- WHEREAS,** the State of Alaska Department of Education and Early Development (“DEED”) mandates education by “Attendance Areas” determined by DEED; and
- WHEREAS,** the community of Kachemak Selo is in the DEED Kachemak Attendance Area; and
- WHEREAS,** unlike other communities within the Kenai Peninsula Borough (“KPB”), Kachemak Selo is not served by public roads, public docks or public airports capable of supporting public facilities; and
- WHEREAS,** Kachemak Selo is within one mile of the communities of Razdolna and Vosnesenka, which are served by publicly maintained roads; and
- WHEREAS,** Kachemak Selo is accessed privately through Razdolna and Vosnenka by way of steep trails, beginning from the end of East End Road along a narrow switchback and along the coastal beach to a crossing at Swift Creek to the isolated public road rights-of-way platted through the Kachemak Selo Subdivision; and
- WHEREAS,** a school site selection committee (“SSSC”) for the Kachemak Attendance Area recommended a school site location in Kachemak Selo through a memo dated May 8, 2014; and
- WHEREAS,** the site identified by the SSSC was deemed not viable due to poor geotechnical findings; and
- WHEREAS,** the subject site is the location of the residential structures that were used for school purposes but have since been decommissioned; and
- WHEREAS,** KPB has been awarded \$10,867,503 in DEED funding for the Kachemak Selo School Project; and

WHEREAS, KPB Funding Ordinance 2018-19-25 appropriated \$10,010,000 from DEED for the Kachemak Selo School Project; and

WHEREAS, Resolution 2023-076, which established KPB’s State Capital Project Priorities for 2024, includes the Kachemak Selo Community Center project, which recommends converting the \$10,867,503 in DEED funding to a Department of Commerce, Community and Economic Development (“DCCED”) Grant to be used for a community center to provide for the dual purposes of community needs and use as an education facility to address the academic needs of the community; and

WHEREAS, Resolution 2024-008 requested that the Alaska State Legislature transfer the grant awarded to KPB for construction of a school facility in Kachemak-Selo from DEED to DCCED in order to better address current development needs; and

WHEREAS, the acquisition of the subject property could serve a capital project as either a DEED school site or DCCED community center; and

WHEREAS, by letter dated March 5, 2024, the independent appraisal requirement under the DEED Grant Terms has been formally waived by DEED due to the lack of comparable market transactions necessary to determine an accurate appraisal value; and

WHEREAS, the KPBSD Board of Education, at its regular meeting of _____, 2024, recommended/adopted _____; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of _____, 2024, recommended _____;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Assembly finds that purchasing the following-described real property pursuant to KPB 17.10.040 is in the best interest of KPB:

LOT THIRTY-SIX (36), KACHEMAK SELO, ACCORDING TO PLAT NO. 2002-43, HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (PARCEL NO. 185-212-36)

SECTION 2. That the terms and conditions substantially in the form of the purchase agreement accompanying this Resolution are hereby approved.

SECTION 3. That the purchase price shall be \$150,000.00, subject to the terms of the purchase agreement, plus title and closing costs, and due diligence fees not to exceed \$10,000.00.

SECTION 4. That this acquisition is for the purposes of siting a school or community center that can be used for academic instruction by KPBSD.

SECTION 5. That the above-described land is classified under KPB 17.10.080 as “Institutional”.

SECTION 6. That the Mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this Resolution.

SECTION 7. That the Mayor is authorized to execute a purchase agreement substantially in the form of the accompanying purchase agreement, consistent with applicable provisions of KPB Chapter 17.10.

SECTION 7. That previously appropriated funding, not to exceed \$160,000, is available in the Capital Project Fund account 400.71065.KSELO.48610, for the acquisition of the real property listed in Section 1.

SECTION 8. That this Resolution shall take effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
THIS ___ DAY OF _____, 2024.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk



Kachemak Selo Land Acquisition

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made by and between NIKITA Z. KUZMIN AND OLEMPIADA KUZMIN, as sellers, whose address is PO Box 1542, Delta Junction, Alaska 99737, (jointly, "Sellers") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer, whose address is 144 North Binkley Street, Soldotna, Alaska 99669 ("Borough" or "KPB") (together, "the Parties").

WHEREAS, Sellers are the owners of that real property located in the Homer Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

LOT THIRTY-SIX (36), KACHEMAK SELO, ACCORDING TO PLAT NO.
2002-43, HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT,
STATE OF ALASKA.
(PARCEL NO. 185-212-36) ("the Property"); and

WHEREAS, the Borough has offered to buy, and Sellers are willing to sell the Property as evidenced by this Agreement;

NOW THEREFORE, in consideration of the conditional promises herein contained, Sellers hereby agree to sell to the Borough, and the Borough hereby agrees to buy from Sellers, the Property on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the Property is One Hundred Fifty Thousand Dollars and NO cents (\$150,000.00), subject to independent appraisal, completed as-built survey, and satisfactory inspection. The purchase price must be paid by the Borough at time of closing. The purchase of the property and appropriation of funding for the purchase are subject to approval by the KPB Assembly.

The above purchase price is contingent on the satisfactory removal of the building improvements from the property prior to the close of escrow. In the event the improvements are not removed prior to closing the purchase price will be reduced to One Hundred thousand Dollars (\$100,000.00). In the event the improvements are not removed prior to closing, all personal property contained within or related to the improvements will be conveyed by bill of sale at the time of closing free of any claims or encumbrances.

2. EXPIRATION OF OFFER

Sellers must sign and return this Agreement to the Borough on or before **September 4, 2023;** otherwise, this offer shall terminate.

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3. TITLE

Title must be delivered at time of closing by statutory warranty deed, which must be issued to the Borough. Sellers warrant and covenant that at the time of closing there will be no liens or judgments recorded against Sellers in the same recording district in which the Property subject to this Agreement is situated. Title must be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record as agreed to by buyer.

4. ESCROW AND CLOSING COSTS

Except as described in this Section, in addition to the purchase price, the Borough agrees to pay for buyer-related closing costs in connection with this Agreement, including appraisal and inspection fees. Sellers agree to pay for seller-related closing costs, including the ALTA owner's policy of title insurance and as-built survey. Property taxes for the current year, if any, will be prorated to the date of closing. Sellers are responsible for realtor's commission, if any; all unpaid taxes for prior years, if any; and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

5. CLOSING

Unless otherwise agreed to in writing, closing will occur within 90 days, or as specifically agreed to by both Parties. At closing, the Borough will pay the balance of the purchase price. Both Parties will execute all documents required to complete the Agreement and, if applicable, establish an escrow account.

6. POSSESSION

Possession will be delivered to the Borough at time of recording unless otherwise agreed to in writing by all Parties.

7. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by the Borough is subject to authorization by the KPB Assembly and appropriation of funds. If the KPB Assembly fails to authorize the purchase of the subject land and appropriate funds, this Agreement will terminate without penalty.

8. DISCLOSURES

Sellers hereby agree to provide property disclosures including any and all information regarding known defects, deficiencies, legal matters, environmental issues or hazards, that may be personally known by the Sellers in writing. If said disclosures present a matter unsatisfactory to the Borough, the Borough may terminate this Agreement without penalty.

9. CONTINGENT ON INSPECTION

This offer and Agreement are contingent upon the completion of a property inspection satisfactory to the Borough for its use and at the Borough's expense. Sellers must, upon reasonable notice, provide access to the Property for inspection purposes to the Borough and its

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representatives. Any invasive inspection procedures require Sellers' express permission and must be promptly repaired or replaced by the Borough in a workman-like manner. The Borough will have 60 days from the execution of this Agreement to complete inspections and determine its satisfaction unless otherwise provided in writing.

10. HAZARDOUS MATERIAL

Sellers covenant to the best of Sellers' knowledge, that as of the date of this Agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. Seller agrees that no hazardous substances or wastes will be located on or stored on the Property, or any adjacent property owned or leased by the Seller, owner or contractors, nor will any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by Sellers, their agents, employees, contractors, or invitees, prior to the Borough's ownership, possession, or control of the Property.

11. ENVIRONMENTAL CONTINGENCY

If during the course of the Borough's due diligence inspection of the Property pursuant to Section 9, the Borough discovers the presence of environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that are deemed undesirable by the Borough, the Borough will have the right to give notice to Sellers, accompanied by a copy or copies of the Third-Party Report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying Third-Party Report must be given no later than 60 days from receipt of said report. The notice under this section must state:

- (i) that the Borough is terminating this Agreement due to the presence of such hazardous materials on or adversely affecting the Property; OR
- (ii) provide Sellers 30 days from notice to provide a mitigation plan outlining steps taken by seller to remedy said hazards to the Borough's satisfaction at Sellers' expense.

Following the notice and report described in this Section, the Parties may negotiate other resolutions as may be agreeable to the Parties in writing to be included as a part of this Agreement. In the event the Parties cannot agree in writing on a resolution to remedy any environmental concerns within 90 days of the notice, this Agreement will automatically terminate.

It is expressly understood that, by execution of this Agreement, Sellers hereby indemnify the Borough for any and all CERCLA-related claims, liabilities or matters, unless otherwise provided for in this Agreement. Said indemnification will survive closing and termination of this Agreement. Upon successful close of escrow said indemnification will continue for a period

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of not less than 12 months, from the date of closing unless otherwise provided for in this Agreement.

If this Agreement is terminated pursuant to any report detailing environmental conditions that may or may not exist on the Property, such report(s) will remain confidential and proprietary. The report(s) will be marked as confidential and will not be released to a private individual, entity, or non-profit without express agreement of the Parties hereto. Notwithstanding, the report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

12. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the Parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both the Borough and Sellers or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, will be covenants constituting terms and conditions of the sale, and will continue in full force and effect until the purchase price is paid in full or this Agreement is earlier terminated.

13. BREACH REMEDY

Prior to closing of the sale, in the event that the Borough or Sellers fail to make any payment required, or fail to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this Agreement, the Sellers or the Borough may terminate this Agreement.

14. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing, may be canceled in whole or in part, at any time, upon mutual written agreement by Sellers and the KPB Mayor. This Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. The Borough may cancel this Agreement without penalty in the event additional contracts required of this project are not secured.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the Parties thereto, must be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand may thereafter be so given, made or mailed. A notice given hereunder will be deemed received when deposited in a U.S. general or branch post office by the addressor.
- D. Interpretation. This Agreement will be deemed to have been jointly drafted by the Parties. It will be construed according to the fair intent of the language as a whole, not for or against either Party. The interpretation and enforcement of this Agreement will be governed by the laws of the State of Alaska. Any lawsuit

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brought arising from this Agreement must be filed in the superior court of the Third Judicial District, State of Alaska, located in the City of Homer, Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.

- E. Condition of Property.
Sellers will deliver the Property in its as-is condition.
- F. Confidentiality. This Agreement will be considered proprietary to the Parties until closing occurs. Following closing, this Agreement may be considered a public record.
- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which will be deemed an original but all of which together will constitute one and the same instrument

This Agreement has been executed by the Parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

SELLERS:

Peter A. Micciche, Mayor



8/18/2023

Nikita Z. Kuzmin



9/5/2023

Olempiada Kuzmin

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Michele Turner, CMC
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney